

Limitations On Information A CRA Can Provide

- ▶▶ Sterling Has An Obligation To Provide The Most Up To Date Accurate Information
- ▶▶ If Nationwide Database Is Used, If Such Database Is Not Up To Date, Must Advise Subject Via Letter That Information That May Not Be Up To Date Is Included In Report

Limitations On Information A CRA Can Provide

- ▶▶ Multi-State Issues
 - ▶ No Clear Answers

Specific Procedures End Users Must Follow

- ▶▶ Consent and Disclosure
- ▶▶ Pre-Adverse Action
- ▶▶ Adverse Action

Consent And Disclosure

(2) Disclosure to consumer.

(A) In general. Except as provided in subparagraph (B), a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless--

- (i) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and*
- (ii) the consumer has authorized in writing (which authorization may be made on the document referred to in clause (i)) the procurement of the report by that person.*

Consent And Disclosure For Consumer Reports

- ▶▶ Consent Can Be Accomplished Via A Signed Employment Application, Etc
- ▶▶ However, A Separate Stand-Alone Disclosure Is Mandated
- ▶▶ Since A Separate Stand-Alone Disclosure Is Mandated, To Best Demonstrate Consent, A Signed Stand-Alone Consent and Disclosure Is Recommended
- ▶▶ Practically, A Separate Document Also Is Logical Due To The Need To Obtain Additional Information Such As Date of Birth

Consent And Disclosure For Consumer Reports

- ▶▶ Be Careful Of Extraneous Information On Stand-Alone Disclosure
- ▶▶ Remember Statutory Goal – To Ensure Individuals Understand A Report Is Being Obtained

Consent And Disclosure For Investigative Consumer Reports

- ▶▶ Statute Provides That Consent Form Must Contain A Box For The Consenting Individual To Check If He/She Wants Further Information Regarding The Scope Of The Report And/Or A Copy Of The Summary of Rights
- ▶▶ If The Box Is Checked, The Company Or Sterling Must Forward A Letter To The Individual Setting Forth The Scope Of The Check
- ▶▶ Distribution Of Summary of Consumer Rights With Consent In All Instances Is A Best Practice

Consent And Disclosure - State Law Issues – i.e.,

- ▶▶ California- All Reports Generally Analogous to Investigative Consumer Reports
 - ▶ Specific Language As To Specific Subjects Of Requested Report And Right to Obtain Copy Of Report Specifically Required
- ▶▶ Minnesota- Check the Box Feature
- ▶▶ Oklahoma- Check the Box Feature
- ▶▶ Others

Sterling's Model Form

- ▶▶ Sterling's Model Form Is Intended To Cover Both Types Of Reports While Easing Employer Obligations
- ▶▶ And To Allow One National Form
- ▶▶ Summary Of Rights Provided With Consent
- ▶▶ Scope Of Checks Expressed To All
- ▶▶ State Law Caveats

Consent And Disclosure - Additional Issues

- ▶▶ Continuing Consent
 - ▶ Permissible Under FCRA With Consumer Reports
 - Recommend Obtaining New Consent With Rehired Employees
 - ▶ Not Recommended For Investigative Consumer Reports Due To Practical Compliance Issues
 - ▶ Strongly Not Recommended In California For Any Reports Due To Statutory Language, Practical Compliance Issues And Pro-employee Nature Of California Law